

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JENNIFER FELDSHER,

Plaintiff,

-against-

JAIME A. LOUREIRO and GENERAL
TRANSPORTATION SERVICES, INC.,

Defendants.

Index No.: 07-CV-10988-DB

ANSWER TO
COMPLAINT

ECF CASE

JURY TRIAL
DEMANDED

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The defendants, **JAIME A. LOUREIRO and GENERAL TRANSPORTATION SERVICES, INC.**, by their attorneys, AHMUTY, DEMERS & McMANUS, ESQS., as and for its Answer to the plaintiff's Complaint, alleges upon information and belief:

PARTIES

1. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "I" of the Complaint.
2. Denies upon information and belief each and every allegation contained in paragraph designated "II" of the Complaint and respectfully refers all questions of law to this Honorable Court.
3. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph designated "1", "4" and "7" of the Complaint and respectfully refers all questions of law to this Honorable Court.
4. Denies upon information and belief each and every allegation contained in paragraph designated "2" of the Complaint except admits that JAIME A. LOUREIRO was and still is a resident of Westchester County, State of New York.

5. Denies upon information and belief each and every allegation contained in paragraph designated "3" of the Complaint except admits that GENERAL TRANSPORTATION SERVICES, INC., was a domestic business corporation duly organized and existing under the laws of the State of New York.

6. Denies upon information and belief each and every allegation contained in paragraph designated "5" of the Complaint except admits that GENERAL TRANSPORTATION SERVICES, INC., was the owner of a certain automobile, a 2005 Hino, bearing New York registration number 47862JT.

7. Denies upon information and belief each and every allegation contained in paragraph designated "6" of the Complaint except admits that JAIME A. LOUREIRO was the operator of the aforementioned automobile owned by defendant GENERAL TRANSPORTATION SERVICES, INC. with consent of its owner.

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

8. Defendants, JAIME A. LOUREIRO and GENERAL TRANSPORTATION SERVICES, INC., repeat, reiterate and reallege each and every denial in answer to paragraphs "1" through "7" as if more specifically set forth in answer to paragraph designated "8" of the Complaint and each and every part thereof.

9. Denies having knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "9" of the Complaint.

10. Denies upon information and belief each and every allegation contained in paragraphs designated "10", "11", "12", "13", "14", "15", "16", and "17" of the Complaint and respectfully refers all questions of law to this Honorable Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

11. That the personal injuries and/or damages alleged to have been sustained by the plaintiff were caused entirely or in part through the culpable conduct of the plaintiff, without any negligence on the part of the answering defendant and the answering defendant seeks a dismissal or reduction in any recovery that may be had by the plaintiff in the proportion which the culpable conduct, attributable to the plaintiff, bears to the entire measure of responsibility for the occurrence.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

12. Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

13. That there is no personal jurisdiction over the person of the answering defendant, there having been no proper service of process.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. That the plaintiff failed to mitigate, obviate, diminish or otherwise act to lessen or reduce the injuries, damages and disabilities alleged in plaintiff's Complaint.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

15. That the Complaint fails to state a valid cause of action as against the answering defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

16. If it be determined that the plaintiff failed to use available seatbelts, the answering defendant pleads this fact in mitigation of damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

17. That Plaintiff has not sustained a serious injury, as defined in Section 5102(d) of the Insurance Law, or economic loss greater than basic economic loss, as defined in Section 5102(a) of the Insurance Law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

18. Plaintiffs' claims are barred by the Doctrine of Laches.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

19. That the personal injuries and/or damages alleged to have been sustained by the plaintiff were caused entirely or in part through the culpable conduct of the plaintiff, without any negligence on the part of the answering defendants and the answering defendants seek a dismissal or reduction in any recovery that may be had by the plaintiff in the proportion which the culpable conduct, attributable to the plaintiff, bears to the entire measure of responsibility for the occurrence.

WHEREFORE, the defendants, JAIME A. LOUREIRO and GENERAL TRANSPORTATION SERVICE, INC., demand judgment dismissing the plaintiff's Complaint on the merits together with the costs and disbursements of this action.

Dated: Albertson, New York
January 3, 2008

By: 

THOMAS G. CHOJNACKI, ESQ. (TGC-6265)
AHMUTY, DEMERS & McMANUS, ESQS.
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